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EXAMINER

WHIPPLE, BRIAN P

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. Claims 1-2, 4-7, 12, 16-22, and 24-28 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments filed 6/6/08 have been fully considered but they are not persuasive.

3. As to independent claims 1, 16, and 22, Applicant argues Sakai discloses actual data transfer rates as opposed to data transfer rates at which devices are capable of communicating. The Examiner respectfully disagrees. An actual data transfer rate is one at which communication is capable. If the devices of Sakai were not capable of respective transfer rates, they would not be able to actually implement the transfer rates.

4. Further regarding claims 1, 16, and 22, Applicant argues Sakai does not disclose "adjusting to the maximum available data transfer rate." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., adjusting to the maximum available data transfer rate) are not recited in the rejected claim(s). Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

5. Further regarding claims 1, 16, and 22, Applicant argues Sakai does not disclose obtaining a throttle value transfer rate during a communication start-up process. The Examiner respectfully disagrees. The cited portion of Sakai (Col. 5, ln. 43-61) clearly discloses that the internal circuit communicates a transfer rate via the interface circuit and the input/output port to the PC (Col. 5, ln. 45-46, "communication will be carried out at the transfer rate of 100 megabits per second) during the start-up of a communication process between the DVC and the PC and then transfer occurs at this set rate (Col. 5, ln. 58-60, "image data is sent from the DVC... to the PC... at the transfer rate of 100 megabits per second).

6. As to claim 19, Applicant argues Lin does not disclose the amended subject matter relating to communication start-up process. However, Sakai may be relied upon to properly reject this amended subject matter. See the prior art rejection below.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 4, 16, 22, and 26 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Sakai, U.S. Patent No. 6,665,810 B1.

9. As to claim 1, Sakai discloses a communications system comprising:

a first host capable of transmitting multiplexed data at a first data transfer rate (Fig. 6, item 3);

a second host capable of receiving multiplexed data at a second data transfer rate (Fig. 6, item 2);

a data throttle, wherein the data throttle limits the first data transfer rate to a throttle value that is less than or equal to the lesser one of the first data transfer rate and the second data transfer rate (Fig. 6; Col. 6, ln. 37-50), and

wherein the throttle value transfer rate is obtained during a communications start-up period (Col. 5, ln. 43-61).

10. As to claims 4, 16, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 19, 24-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai as applied to claim 1 above, in view of Lin et al. (Lin), U.S. Patent No. 6,405,256 B1.

13. As to claim 2, Sakai discloses the invention substantially as in parent claim 1 above, including a first data transfer rate (Fig. 6, item 3) and a second data transfer rate (Fig. 6, item 2), wherein a data throttle limits the first data transfer rate to a throttle value that is less than

or equal to the lesser one of the first data transfer rate and the second data transfer rate (Fig. 6; Col. 6, ln. 37-50).

Sakai is silent on the network having a third data transfer rate and limiting the throttle value based on the third data transfer rate.

However, Lin discloses the network having a third data transfer rate (Col. 3, ln. 8-28) and limiting the throttle value based on the third data transfer rate (Col. 3, ln. 8-28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Sakai by throttling based on a third data transfer rate as taught by Lin in order to adjust data transfer rates to avoid congestion (Lin: Col. 3, ln. 8-28).

14. As to claims 19, 24-25, and 28, the claims are rejected for similar reasons to claims 1-2 above.

15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai as applied to claim 1 above, in view of what was well known in the art.

16. As to claim 12, Sakai discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice (See MPEP 2144.03) is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Sakai by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

17. Claims 5-7, 17-18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai as applied to claims 1, 16, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

18. As to claim 5, Sakai discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Sakai by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through

the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

19. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

20. As to claim 7, Sakai and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

21. As to claims 17 and 27, the claims are rejected for similar reasons to claim 6 above.

22. As to claim 18, the claim is rejected for similar reasons to claim 7 above.

23. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai and Lin as applied to claim 19 above, and further in view of Bach.

24. As to claim 20, the claim is rejected for similar reasons to claim 6 above.

25. As to claim 21, the claim is rejected for similar reasons to claim 7 above.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (9:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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9/29/08

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